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Jorge Melgosa

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SQUIRE, SANDERS & DEMPSEY L.L.P.

8000 TOWERS CRESCENT DRIVE

14TH FLOOR

VIENNA, VA 22182-6212

EXAMINER

SHEDRICK, CHARLES TERRELL

ART UNIT

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2617

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 2/9/09 have been fully considered but they are not persuasive.

2. Applicant respectfully submits that the combination of 3GPP and Lialiamou fails to disclose or suggest all of the elements of any of the presently pending claims.

The 3GPP specification generally relates to charging management, and more specifically to a charging data description for the packet switched (PS) domain. 3GPP does not disclose or suggest "identifying one of said charging nodes as being a default charging node" (as recited in claim 1) or where charging information is sent to the default charging node "when said default charging node is available" (as also recited in claim 1).

3. However, the Examiner respectfully disagrees. For the sake of clarification and understanding of the Examiner's interpretation of the claims, the term "default" is understood as follows. Default is basically the option that is automatically assigned unless overridden. In other words the default charging node would be the charging node automatically assigned. As noted by the Applicant "MPEP 2141 (II) indicates, "When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to...(B)The references must be considered as a whole and must suggest the desirability"

4. Consider the Applicants arguments that 3GPP does not disclose or suggest "identifying one of said charging nodes as being a default charging node" (as recited in claim 1)". The office action dated 12/12/08 attempts to direct the applicants attention to the most relevant portion of the art, however the prior art of record should be considered as a whole. Page 6 of

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the prior art (i.e., 3GPP) outlines the scope noting that “*in order to enable operators the ability to provide commercially viable service, there is a need to provide charging functions. For GPRS these functions include the generation of Charging data records (CDR's) by the Serving GPRS Support Node (SGSN) and the Gateway GPRS Support Node (GGSN) as well as the transport of these CDR's to a billing system through a **Charging Gateway**.*”

5. As to the Applicants argument that the prior art of record does not teach identifying one of said charging nodes as being a default charging node" (as recited in claim 1), the Examiner respectfully disagree, at least in view of the scope of 3GPP. The above noted limitation suggest automatically identifying a charging node. At least the annex (e.g., see page 56 of 3GPP) suggest that "the profile may also specify an optional charging gateway address..."(i.e., the location of a “charging gateway).

6. The Applicant further asserts that the prior art does not teach “ where charging information is sent to the default charging node "when said default charging node is available" (as also recited in claim 1).

7. However, The Examiner respectfully disagree. The scope of 3GPP clearly points out that *in order to enable operators the ability to provide commercially viable service, there is a need to provide charging functions. For GPRS these functions include the generation of Charging data records (CDR's) by the Serving GPRS Support Node (SGSN) and the Gateway GPRS Support Node (GGSN) as well as the **transport** of these CDR's to a billing system through a Charging Gateway.*”

8. Applicant argues that furthermore, it is respectfully submitted that, in 3GPP, there is **no disclosure of a charging node at all.**

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9. The Examiner respectfully invites the Applicant to review his/her own written disclosure in view of the prior. At least Page 5 of the Applicant's original disclosure appear to identify structures that are consistent with 3GPP (i.e., a charging node). The Examiner is unable to make the distinction between the claimed structure in view of the prior art of record (e.g., see replicated section from the Applicant's original disclosure below).

10. Applicant argues that "The Office Action does not appear to have explicitly identified these features of the claims. As MPEP 2141 (II) indicates, "When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to:(A)The claimed invention must be considered as a whole; (B)**The references must be considered as a whole** and must suggest the desirability and thus the obviousness of making the combination; (C)The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and (D)Reasonable expectation of success is the standard with which obviousness is determined. *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986)." Applicant respectfully submits that the claim has not been considered as a whole, in that the Office Action has not particularly addressed how it is alleged that 3GPP discloses "identifying one of said charging nodes as being a default charging node" (as recited in claim 1) or where charging information is sent to the default charging node "when said default charging node is available" (as also recited in claim 1).

Furthermore, it is respectfully submitted that, in 3GPP, there is no disclosure of a charging node at all. The Examiner is invited to state explicitly where this feature is found with reference to specific text in 3GPP. The Office Action referred generation to Annex A and certain paragraphs thereof, but these portions of 3GPP do not mention a charging node.

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In particular Annex A refers merely to charging characteristics it also refers to charging profiles. However there is no disclosure of a charging node. Moreover, there is no disclosure of a plurality of charging nodes, or where any of those nodes is a default charging node.

Again, the Office Action fails to state where there is any disclosure of

- i) charging node;
- ii) a further charging node; and
- iii) a default charging node.

It is respectfully submitted that there is no disclosure in 3GPP of these features. 3GPP merely refers to an SGSN home default. The SGSN is not a charging node. Furthermore there is no disclosure of any case of reverting back to a particular charging node (such as a default charging node). Therefore there are a number of features of the independent claims which are not disclosed or even hinted at in 3GPP.

11. The Examiner respectfully disagrees. The Applicant is invited to carefully review at least the following:

- a. The Examiner's reasonable interpretation of default. For the sake of clarification and understanding of the Examiner's interpretation of the claims, the term "default" is understood as follows. Default is basically the option that is automatically assigned unless overridden. In other words the default charging node would be the charging node automatically assigned.
- b. At least Applicants original disclosure specification page 5 which notes the following:

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- i. The communications system may be a UMTS architecture communications system.
 - ii. The communications system may be a GPRS architecture communications system.
 - iii. The first communications node may be a gateway GPRS service node (GGSN).
 - iv. The second communications node may be a serving GPRS support node (SGSN).
 - v. The at least one charging node may comprise a charging gateway function (CGF).
 - vi. The at least one charging node may be a charging gateway (CG).
 - vii. The memory may be located within said first or said second communications node.
 - viii. A second memory may be located within the other of said first or second communications node, wherein said second memory may be arranged to store information identifying at least one of said charging nodes and said second memory may be arranged so that the value stored in said memory is synchronized with the value stored in said second memory. In the instant case, the cited sections of the prior art in the context of the reference of a whole explicitly teaches the equivalent structures and functions.
- c. The cited sections of the prior art within the context of the reference as a whole.

For example, Page 6 of the prior art (i.e., 3GPP) outlines the scope noting that “ *in order*

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*to enable operators the ability to provide commercially viable service, there is a need to provide charging functions. For GPRS these functions include the generation of Charging data records (CDR's) by the Serving GPRS Support Node (SGSN) and the Gateway GPRS Support Node (GGSN) as well as the transport of these CDR's to a billing system through a **Charging Gateway**."*

12. The Applicant notes that the Office Action has not relied upon 3GPP alone, but on 3GPP as combined with Lialiamou. Lialiamou generally relates to charging in a telecommunications network. In a Lialiamou, session-specific event data is collected in a telecommunications network where sessions are connected through a number of network entities that generate event data and have mutual signaling connections. As far as the Office Action's reference to Lialiamou is concerned, Applicant respectfully submits that the Office Action has referenced only a part of a claim feature, and has done so in such a way that the claim feature does not make sense. Specifically the Office Action refers to "a period during which said default charging node is unavailable regardless of availability of any other charging node." This way of breaking up the claim makes little grammatical sense. Specifically, it is respectfully submitted that in the broadest reasonable interpretation of the claim, the clause "regardless of availability of any other charging node" modifies the verb "send." As presented in the Office Action, however, it is unclear whether the Office Action reflects a proper understanding of the claim, or whether the Office Action has misinterpreted the clause to some how to refer to the "unavailable" status of the default charging node. Unfortunately, because the Office Action lacks an explanation of the rejection, it is unclear whether the Office Action has simply quoted the claim terminology in an unusual way, or whether the Office Action has made a fundamental error in grammatically

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parsing the claim. If it is the latter case, it is respectfully submitted that (from a grammatical standpoint) the only available referent for the clause "regardless of availability of any other charging node" is the verb "send," such that the claim recites that "said first node and said second node are configured to send [the information to the default node] regardless of availability of any other charging node." In case the Office Action has properly understood the claim, and has viewed Lialiamou as corresponding to what is recited in the claim, Applicant respectfully disagrees. Figure 4 of Lialiamou (cited in the Office Action) does not make any reference to any configuration where charging information is sent to a default charging node using information stored in a memory, where the default charging node is available, and where this availability is after a period during which the charging node is unavailable regardless of availability of any other charging nodes. The Office Action has further made vague reference to "description," without explaining how the "description" is alleged to correspond with what is claimed.

With reference to the sub-claims, the Office Action referred to specific pieces of description, but again, in these there is no reference to gateways as being charging gateways/nodes (which appears to be the Office Action's unstated premise). Should the Office Action persist in using Lialiamou, it is respectfully requested that the Office Action identify where, in this document, there is any reference to a) a charging node; b) more than one charging node; c) a default charging node; d) where the nodes are configured to send respective charging information for a session to a default charging node using information stored in the first memory and where when said default charger node is available, after a period during which said default charging node is unavailable regardless of availability of any other charging node; and e) why one of ordinary skill in the art would wish to incorporate Lialiamou with 3 GPP. It is respectfully submitted,

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therefore, that even if the references were combined, several features of each of the independent claims would not be found in the applied combination (as proven above). Furthermore, the Office Action has not established a reason (such as teaching, motivation, or suggestion) that one of ordinary skill in the art would have found to combine the references. The Office Action at (for example) page 3, simply asserts that it would be obvious to combine the references, but does not state (much less establish based on evidence) why such a combination would be obvious.

In KSR (KSR Int'l Co. vs. Teleflex, Inc.) the Supreme Court reiterated the Federal Circuit's instructions, In re Kahn, 441 F. 3d 977, 988, (Fed. Cir. 2006) that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." KSR, slip op. at 14. In this case the rejection lacks articulated reasoning rational underpinnings that support the legal conclusion of obviousness, and, thus, the rejection should be withdrawn.

13. However, the Examiner respectfully disagrees with the Applicant's assertion that the prior art does not teach the claimed feature. The Examiner agrees that the limitation as written is vague and somewhat lacks clarity. The Examiner's interpretation is based on the Applicant disclosure as well as a discussion with Peter Flanagan, Reg. No. 58,178 during an interview on 8/19/08. It is the Examiner's understanding that based on the above noted discussion(i.e., based on notes from the interview) that "after a period during which said default charging node is unavailable regardless of availability of any other charging node" means that information can be automatically sent to a node that goes offline and comes back online. Basically, the default charging node would go offline for some time period (i.e., a default node would be voluntarily or

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involuntarily taken offline). The same node (i.e., the previous default node) would come back online (e.g., after a period of unavailability) to receive charging information. At least the description "of figure 4" teaches a list of addresses to be used. Therefore, the prior art (i.e., the secondary reference) would satisfy the above noted condition. Once the default charging node comes back online (i.e., after a period unavailability) the node shall be consider as available. The cited section in the context of the reference as a whole teaches a list of "available addresses" and therefore would read on the claimed limitation (e.g., as best understood by the Examiner).

14. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Page 6 of the prior art (i.e., 3GPP) outlines the scope noting that "*in order to enable operators the ability to provide commercially viable service, there is a need to provide charging functions.*"

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHARLES SHEDRICK whose telephone number is (571)272-8621. The examiner can normally be reached on Monday thru Friday 8:00AM-4:30PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lester Kincaid can be reached on (571)-272-7922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles Shedrick/
Examiner, Art Unit 2617